Supreme Court, U.S.
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No. 96-1680

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

SHELDON SILVER, *et al.*,

Appellants,

vs.

ANGEL DIAZ, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

MOTION TO AFFIRM

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QUESTIONS PRESENTED

1. Whether the district court correctly determined, on the record before it, that there was no triable issue of material fact as to whether the intent to segregate voters by race was the predominant intent behind the creation of New York's Twelfth Congressional District.

2. Whether the district court properly found that the defendants had not met their burden of producing evidence showing that the creation of the Twelfth Congressional District was necessary to comply with Section 2 of the Voting Rights Act.

3. Whether the district court properly found that the defendants had not met their burden of producing evidence showing that the design of the Twelfth Congressional District was narrowly tailored to remedy any potential liability under Section 2 of the Voting Rights Act.

PARTIES TO THE PROCEEDING

The parties to the proceeding in the United States District Court were:

1. Angel Diaz, Reynaldo Coholo and Denise Motley, plaintiffs and appellees herein.

2. Sheldon Silver, in his offical capacity as Speaker of the House for the Assembly of the State of New York, defendant and appellant herein.

3. Congresswoman Nydia Velazquez, Congressman Major R. Owens, Marshall Dubin, Asquith Reid, Evy Papillon-Just, William Abrams, Annella C. Johnson, defendant-intervenors and appellants herein.

4. Luis Garden Acosta and Margarita Lopez, defendant-intervenors and appellants herein.

5. Peter Lau and John Kuo Wei Tchen, defendant-intervenors and appellants herein.

6. George E. Pataki, in his offical capacity as Governor of the State of New York, Joseph L. Bruno, in his offical capacity as President Pro Tem and Majority Leader of the Senate of the State of New York, the Board of Elections of the State of New York and Owen T. Smith, Evelyn J. Aquila, and Helena M. Donohue in their official capacities as Commissioners of the Board of Elections of the State of New York, defendants.

7. Congresswoman Carolyn B. Maloney, defendant-intervenor.

8. Delco L. Cornett, plaintiff-intervenor.

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MOTION TO AFFIRM

Appellees, pursuant to Rule 18.6 of the Rules of the Supreme Court of the United States, respectfully urge that the Court affirm the judgment below permanently enjoining further use of the current configuration of New York State's 12th Congressional District (the "12th CD") on the ground that it is intended to segregate voters by race, in violation of the Equal Protection Clause of the Fourteenth Amendment.

STATEMENT OF THE CASE

This case is about New York's bizarrely configured 12th CD, a tri-county, 813-sided monstrosity, which was designed to include within it a majority of Hispanic voters, and to exclude voters of other races. Plaintiffs are three citizens who reside in the 12th CD, and thereby have standing to bring this action. *See United States v. Hays*, 115 S. Ct. 2431 (1995).

A. Background to the Enactment of New York's Congressional District Plan

The 1990 decennial census established that New York State had not grown in population as fast as other states, and that New York's congressional delegation to the House of Representatives would have to be reduced from 34 to 31 members.

In March of 1991, with electoral deadlines approaching, the Legislature had not enacted a congressional district plan. In response to the growing crisis caused by the Legislature's failure to act, a lawsuit, *Reid v. Marino*, No. 9567-92, was filed in the New York Supreme Court of Kings County, to compel the development of a satisfactory district plan. That court appointed a panel of three referees to draft a plan.

At the same time, a federal action, *PRLDEF v. Gantt*, No. CV-92-1521 (SJ) was filed in the U.S. District Court for the

Eastern District of New York. The *PRLDEF* court appointed a special master and instructed him to develop a district plan.

Both houses of the New York Legislature and the Governor were named defendants in each of these actions, which proceeded concurrently. Representatives of each house of the legislature actively participated in hearings before both courts. Each house of the Legislature submitted proposed district plans, both to the state court referees and to the federal special master.

The special master developed a plan and filed it with the federal court on May 26, 1992. On June 4, the referees made a formal report to the state judge recommending the adoption of the plan they had developed. Thereafter, on June 8, 1992, the referees' plan was adopted as law by order of the state court.

On June 9, 1992, the state referees' plan was enacted into law by the Legislature, and it was signed by the Governor a few days later. The new plan -- along with the referees' report explaining it -- was sent to the Department of Justice as part of the State's effort to obtain pre-clearance under section 5 of the Voting Rights Act ("VRA"), 42 U.S.C. § 1973c. The district plan subsequently was pre-cleared by the Justice Department, and became state law.

B. The Proceedings Below

Plaintiffs commenced this action in June 1995, alleging that the 12th CD unconstitutionally segregated voters by race. A three-judge panel was designated to hear this action pursuant to 28 U.S.C. § 2284 in December, 1995.

The parties below had ample opportunity to present evidence to the district court. Silver submitted a motion to dismiss on November 7, 1995, on the basis of *res judicata* and other fact-based grounds, and presented a over a thousand pages of evidence in support of his motion. Plaintiffs moved for

a preliminary injunction on April 2, 1996, and the parties submitted thousands more pages of evidence in support and in opposition to that motion. A hearing on the motion for a preliminary injunction was held on July 1, 1996. All parties attended this hearing. The motion subsequently was denied on the grounds that it would have been too disruptive to the State's electoral process. *See Diaz v. Silver*, 932 F. Supp. 462 (E.D.N.Y. 1996).

On July 22, 1996, plaintiffs moved for summary judgment. Appellants Luis Garden Acosta and Margarita Lopez (the "Lopez Intervenors") cross-moved for summary judgment.[1]

On February 26, 1997, the three-judge district court unanimously granted plaintiffs' motion for summary judgment, denied the Lopez Intervenors' cross-motion for summary judgment, and denied Silver's motion to dismiss. This decision is annexed by Silver to his appendix ("Silver App."), at A-1. This appeal followed.

GROUNDS FOR AFFIRMANCE

Appellants' argument here, stripped to its essence, is that the district court improperly applied the settled law of summary judgment. In fact, the district court's decision was an appropriate response to the strongest case alleging a *Shaw*-type claim of racial gerrymandering that ever has been filed.

Appellants have identified no novel or substantial issues of law in this appeal. They point to no split between U.S. courts of appeal -- or between the district courts of two circuits, or between a federal court and a state court of last resort -- on any

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[1]Both Silver and the Lopez Intervenors point out that no hearing was held on the summary judgment motion, as if to imply that the district court acted precipitously, but the fact is that neither they nor any other party requested a hearing on that motion.

legal principle or issue.

To the contrary, the district court's decision below turned, above all, on a singular failure of defendants' evidence. As a result, a review by this Court would be pointless. An examination of the salient features of the evidentiary record shows the overwhelming, and essentially unchallenged, character of the plaintiffs' case.

I. PROOF OF THE PREDOMINANCE OF RACIAL CONCERNS IS OVERWHELMING

"A racially gerrymandered districting scheme, like all laws that classify citizens on the basis of race, is constitutionally suspect." *Shaw v. Hunt*, 116 S. Ct. 1894, 1900 (1996). In a case alleging racial gerrymandering, the plaintiff must show "that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller v. Johnson*, 115 S. Ct. 2475, 2488 (1995). To show that race was the predominant factor, "a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles" to racial considerations. *Id.*

If race predominated in the drawing of districts, the district plan "cannot be upheld unless it satisfies strict scrutiny, our most rigorous and exacting standard of constitutional review." *Id.*, at 2490. At this point, the burden shifts to the defendant to prove "that its districting legislation is narrowly tailored to achieve a compelling interest." *Id.*

Appellees' undisputed evidence below included the point-blank admissions of those who drew the 12th CD that it was intended to segregate voters by race, which admissions were adopted by the State of New York; the shape and demographics of the 12th CD; admissions in the legislative record; and the content of alternative district plans proposed by the New York

Legislature.

A. The Referees' Admissions in the Referees' Report

In the Final Report of the Referees, dated June 4, 1992 (reprinted in Lopez Intervenors' Appendix ("Lopez App."), at A-51, without appendices) (the "Referees' Report"), the referees first revealed the district plan that includes the 12th CD. The Referees' Report was made contemporaneously with the district plan, by the very individuals who designed it. The Referees' Report sets forth the referees' factual findings and interpretations of law, and describes the precise methodology they used in configuring New York's congressional districts. *See* Silver App., at A-12.

In a word, the Referees' Report reveals that the referees were obsessed with the issue of race. The report refers to little else, either when it compares proposed district plans, or when it discusses the referees' own plan, which the referees concede to have created seven "minority" districts. *E.g.*, Lopez App., at A-105 - A-112; A-115 - A-124; A-128 - A-148; A-150 - A-156. As the district court correctly observed, "the referees provided a compendium of the racial composition of the minority districts," such that "[f]or each district, the only characteristic analyzed was voters' race." Silver App., at A-15.[2]

Apart from the general tenor of the Referees' Report, there are particular, critical admissions that prove the intent to segregate voters by race. Foremost among these admissions is

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[2]This emphasis reflects the fact that the referees unquestionably interpreted the VRA to *require* the construction of as many race-based districts as possible. As they admitted, in "each jurisdiction covered" under the VRA, "the maximum number of districts which achieve 'effective minority voting equality' have been created." Lopez App., at A-54.

the referees' express statement of their districting priorities. They stated that all plans were analyzed in the context of three groups of criteria: first, the one person, one vote standard; second, race-related factors; and third, a loosely connected group of all other criteria -- what they called "[p]ublic interest criteria including contiguity, compactness, traditional boundaries in the State, communities of interest, and political fairness." Lopez App., at A-78. The referees designated the first two as more important "primary criteria." "Federal law mandates that congressional districting plans must meet two primary requirements: the one person, one vote standard and the racial fairness standard." *Id.*, at A-82. The rest are described as "secondary criteria," which "may" be considered. *Id.*, at A-96.

The district court was correct to emphasize that "the significance of the referees' repeated statements in their report that they considered 'traditional criteria' only after considering race cannot be overstated." Silver App., at A-55. All of the traditional, race-neutral criteria -- and the ones they list are identical to the traditional districting criteria listed in *Miller*, *supra*, 115 S. Ct. at 2488 -- are denigrated as "secondary." In the words of *Miller*, these criteria are "subordinated" to "racial considerations." *Id.*[3]

Moreover, it is clear from the Referees' Report that this order of priorities successfully was executed. The referees stated that their districting method involved "obtain[ing] estimated voter registration data by race." Lopez App., at A-114. In a stunning series of admissions, the referees describe

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[3]Significantly, the referees *did* apply these criteria when race was *not* at issue. They state that, "in drafting the upstate counties," which contained no majority-minority districts, "we focused on honoring traditional boundaries, compactness, political fairness and communities of interest." *Id.*, at A-112 - A-113.

how this racial data was processed with the help of a race-conscious computer program:

> Based upon the Board of Elections registration list, using surname dictionaries to identify Hispanic and non-Hispanic Asians, and then census-based estimates to identify non-Hispanic blacks and whites, an estimate of registration by race for New York City was developed. This was loaded on the REAPS [computer] System. Using REAPS, the referees not only were able to see how various minority districts (and the various racial and language groups within the same district) compared at the total population and voting age population levels, but also at the estimated registered voter level.

Id., at A-113 n.32. In a word, the referees constructed "various minority districts" to see which ones supplied the racial characteristics they wanted. This is, on its face, an "effort to segregate the races for purposes of voting," which is proscribed by the equal protection clause. *Shaw v. Reno*, 509 U.S. 630, 642 (1993).

With respect to the 12th CD in particular, the referees provided another critical concession by freely admitting their extraordinary efforts to create a race-based district. In their words, "our Plan includes a newly created tri-county *Hispanic district* which, *although not 'aesthetically' compact*, was *drawn in a manner to ensure an effective concentration of Hispanic voters* that can elect a candidate of their choice." Lopez App., at A-99 - A-100 (emphasis added).

Appendices attached to the Referees' Report set forth the racial demographics of the 12th CD. *See* Racial Breakdown District 12 (headings specify *only* the race of the voters); "CONGRESS Plan State Racial Breakdown"; District Report - Registered Voters (political and racial breakdown of seven

minority districts). Appendix ("Diaz App."), at 7a, 8a.

Appellants do not dispute that the Referees' Report accurately describes the referees' methods, priorities, and motives, nor do they question its account of the 12th CD's racial demographics. The district court correctly concluded that there was "overwhelming evidence that race served as the predominant factor in the referees' creation of the 12th CD." Silver App., at A-50.

B. The Testimony of Dr. Gartner

The Referees' Report identified three expert consultants who were retained by the referees. The first was "Dr. Alan Gartner, Director of Research for the Graduate School and University Center, The City University of New York" ("Gartner"); the other two were Professor Michael Petreides of The College of Staten Island, and Professor Wendy Brown of Tulane Law School. Lopez App., at A-58.

Gartner testified on at least two occasions, on June 2 and June 5, 1992, in hearings before New York Supreme Court Justice James H. Shaw, Jr. Diaz App., at 9a, 25a. Gartner's testimony confirms in every respect the statements contained in the Referees' Report that New York's congressional districts were designed to segregate voters on the basis of race. As with the Referees' Report, the whole tenor of Gartner's testimony reveals his single-minded focus on issues of race. Appellees wish to draw the Court's attention to but a few of many telling admissions.

In the June 2, 1992, hearing, Gartner confirmed the priorities of the referees, stating that

> [t]he instructions of the Judge to the referees, and therefore, their instructions to us [were] to honor, in order, [first] the criteria of the federal Constitution: one person, one vote; [second] the Constitutional

> amendments and the Voting Rights Act that concerns so-called "minority districts"; and then, third, those other factors appropriate for districting.

Id., at 11a. In his testimony three days later, Gartner reiterated these priorities. "Criterion number one was . . . one person, one vote. Only when we had met that . . . then we turned to the Voting Rights Act standard. Only when we met that did we turn to other criteria." *Id.*, at 25a. Again, racial concerns were placed ahead of all other districting criteria save equal population. "There was no sacrifice of criterion two [creating racial districts, ostensibly to comply with the VRA] in order to meet criterion three [all other criteria]." *Id.*

Gartner provided a detailed explanation as to how he used a race-conscious computer program to construct districts. He stated that he used a computer to "translate Census numbers into geography," in order to produce "a set of maps that show concentrations of the three so-called 'protected [racial] classes.'" Diaz App., at 12a. These groups were "'Non-Hispanic blacks, non-Hispanic Asians,' and 'Hispanics.'" *Id.* In Gartner's view, "those concentrations tell you how to do the districting, per the Voting Rights Act." *Id.* He confessed that his description of the district plan "reflects our using those [racial] concentrations as the basis." *Id.*

Elsewhere, Gartner admitted that his computer was programmed to make it easy to identify racial concentrations: "The richer the shade (indicating) -- there's a code here (indicating) -- the more intensive the [racial] population group." *Id.*, at 29a. Gartner testified that districts were drawn to correspond to these racial concentrations. "[W]hat we have done is, we have overlaid with these black lines (indicating) the districts we drew for the seven so-called 'minority districts.'" *Id.*

With respect to the 12th CD in particular, Gartner stated that, "looking at the [racial] concentration maps, one sees . . .

that there is a potential, *if you're not bound by antiquated notions of compactness*, for an additional Hispanic seat. . . . this is District 12, [the] so-called 'Tri-county Seat.'" *Id.*, at 19a (emphasis added). Gartner then described how he used the racial "concentration maps" to identify "a band of Hispanics" stretching "across Northern Brooklyn . . . into Queens." *Id.* Ignoring the East River, Gartner followed this band of Hispanics into "Manhattan, into the Lower East Side"; into "Sunset Park and a little bit in Red Hook," and then added "a scattering of Hispanics, those Northern Queens Hispanics that I talked about." *Id.* Gartner concluded that "what we did, as everybody did, is we drew a district that basically looked like this (indicating), with the three legs." *Id.*

Elsewhere, Gartner carefully correlated every twist and turn of the 12th CD with the desire to segregate voters by race:

> Why do we drive down here (indicating)? *The population concentration of Hispanics [and] Asians, tells you to drive down that far* . . . Why this strange and peculiar configuration up here (indicating), of 12, as it wanders around? *We seek to mimic the Hispanic concentrations up here (indicating), and the same thing in the band across Northern Brooklyn.* . . . [T]here is a white population, the so-called Grand Street Houses, here (indicating), which *we brought out of that district for the purpose of trying to keep as high as possible the Hispanic and Asian population in District 12.*

Id. (emphasis added). It is hard to imagine a clearer depiction of the ugly business of race-based districting.

Appellants do not dispute that Gartner's testimony accurately describes the manner in which New York State's congressional districts, including the 12th CD, were constructed. Professor Gartner's testimony amounts to a clinic

in how to segregate voters on the basis of race. His candid and specific statements prove that New York's 12th CD was racially motivated to the exclusion of other districting criteria. His comments also provide a context for the aforementioned Referees' Report, and confirm the admissions it contains.

C. Evidence of the Subordination of Traditional Districting Criteria

Wholly apart from the admissions of the referees' and Gartner, the subordination of traditional districting criteria is established by undisputed evidence regarding the 12th CD's shape.

The 12th CD is one of the most bizarrely shaped in the nation. Known as the "Bullwinkle" district because of its unusual contours, the 12th CD has 813 sides, and invades three counties (Queens, Kings, and New York), crossing the East River to do so. The district court observed that, "[n]ot only does the district curve and weave among street blocks, at points it is connected purely by parks and highways, such as the Brooklyn-Queens Expressway." *See* Silver App., at A-46 and appendix A (map).

The district court had before it two studies of district compactness. The first, employing two measures of compactness commonly used by political scientists, listed New York's 12th CD as either the least-compact or second least-compact congressional district in New York, and from the sixth to the tenth lowest scoring district in the nation. Pildes & Niemi, *Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election-District Appearances after* Shaw v. Reno, 92 Mich. L. Rev. 483, 565 (1993). The Lopez Intervenors introduced a second study, by David C. Huckabee, entitled *Congressional Districts: Objectively Evaluating Shapes, CRS Report for Congress*, Congressional Research Service (1996). Plaintiffs conceded this article to be

authoritative and adopted its conclusions. The article confirmed that the 12th CD has the either the lowest or second lowest compactness score in New York; and that it ranks either 427th or 428th in the nation, out of 434 districts. *See* Silver App., at A-38 - A-39.

D. Evidence Establishing the Legislature's Intent in Passing the Referees' Plan.

1. Adoption of the Referees' Report and Gartner's Testimony in New York's Section 5 Submission

It is beyond dispute that representatives of the New York Legislature used the Referees' Report to explain New York's congressional district plan to the United States Department of Justice.

Section 5 of the VRA requires "the chief legal officer or other appropriate official" of a state to submit to the U.S. Attorney General any change in voting procedures in a "covered" jurisdiction. Bronx, Kings, and New York Counties are covered jurisdictions, so any change in their congressional district lines must be submitted for pre-clearance.

The Department of Justice has adopted regulations implementing § 5 of the VRA. 28 C.F.R. Chap. 1, Part 51. The required contents of a § 5 submission are specified in 28 C.F.R. § 51.27. Paragraphs (a) and (b) of that section call for copies of the existing law and any proposed changes. Paragraph (c) calls for

> a clear statement of the change *explaining the difference between the submitted change and the prior law or practice*, or *explanatory materials adequate to disclose to the Attorney General the difference* between the prior and proposed situation with respect to voting.

(Emphasis added.) Failure to include this information has been held to render a § 5 submission incomplete. *See East Flatbush Election Comm. v. Cuomo*, 643 F. Supp. 260, 265 (E.D.N.Y. 1986) (in absence of explanatory information demanded under identical provision, plan was "not considered to have been presented for submission" to the Justice Department).

The letter introducing New York's section 5 submission, dated June 16, 1992, was signed by Senator Dean G. Skelos, "[o]n behalf of the Senate," and Assemblyman David F. Gantt, "[o]n behalf of the Assembly." Diaz App., at 2a. In the table of contents following that letter, under "II. Analysis of Change to Previous Law," the first item listed is the Referees' Report. *Id.*, at 3a. Significantly, the "State Court Transcripts" are listed as an appendix to that report. *Id.* This shows that Gartner's statements were also to be included as part of the State's "explanation" of its congressional district plan.

In the portion of the submission expressly referring to 28 C.F.R. § 51.27(c), it is stated that

> *The Report of the Referees to Justice Shaw explains in detail the background leading up to the development of this plan by the State Supreme Court. . . . This law, incorporating the state court plan, is being submitted for preclearance. The Report of the Referees follows.*

Id. (emphasis added).

In short, the submission makes it crystal clear that Referees' Report had been included to satisfy the requirements of 28 C.F.R. § 51.27(c), which calls for material "explaining" the proposed law. The district court rightly observed that, "[u]nder the circumstances, where this is the *only* document used to justify the Legislature's action, this submission binds the Legislature as an adoptive admission." Silver App., at A-50 (emphasis added).

The district court concluded that, "by attaching the referees' report to their Department of Justice pre-clearance submission, the Legislature affirmatively adopted the race-based methodology and rationale the referees used to create the plan." *Id.* The district court's reasoning is wholly consistent with the decisions of this Court, which uniformly stress the probative value of the contents a state's section 5 submission. *E.g.*, *Shaw v. Hunt*, *supra*, 116 S. Ct. at 1900; *Bush v. Vera*, 116 S. Ct. 1941, 1952; *Miller*, *supra*, 115 S. Ct. at 2489. Thus, "the referees' and their experts' statements are admissions here," Silver App., at A-52, and those admissions establish beyond any argument that New York's congressional districts were meant to segregate voters by race.

Appellants can give nor reason for questioning the district court's well-considered conclusion. Silver describes the Legislature's actions in appending the report to its section 5 statement as the "mere submission of racial data." Silver Jurisdictional Statement ("J.S."), at 16, 17. This innocent-sounding description ignores the fact that the Legislature provided the Referees' Report, and no other document, in *explanation* of its congressional district plan, in a part of its section 5 submission requiring such an explanation. Silver also argues that, by submission of the report, "the legislature simply was addressing the requirements of governing federal regulations." *Id.*, at 17. This is true but irrelevant: the fact that the State had to make a report to the Justice Department does not lessen the State's responsibility for what it chooses to submit.

The Lopez Intervenors contend that the section 5 submission makes no statement regarding "the Legislature's motive in adopting New York's Congressional plan." Lopez Intervenor's Jurisdictional Statement ("Lopez J.S."), at 14. This is nonsense. The section 5 submission *refers* to the Referees Report, in a section claiming to provide documents "explaining"

the submitted change. The Legislature's motivation is established by the act of appending the Referees' Report to its submission in explanation of the State's plan. "By using the referees' report, the Legislature authorized the referees to speak for it with regard to the methodology and development of the redistricting plan." Silver App., at A-51.

2. Other Evidence of the New York Legislature's Intent

The district court's finding that the New York Legislature adopted the Referees' Report decisively establishes the Legislature's intent to segregate voters by race. But the district court carefully evaluated a wealth of other undisputed evidence proving this intent.[4]

Most obviously, the shape of the 12th CD, especially when combined with the undisputed evidence of its demographics, establishes that it was intended to accomplish racial segregation. The district court noted that shape "alone may demonstrate that race was the dominant factor" in a district's creation. Silver App., at A-45; *see Miller*, *supra*, 115 S. Ct. at 2486 ("Shape is relevant . . . because it may be persuasive circumstantial evidence that race for its own sake" predominated over other concerns). "In every redistricting case since *Shaw v. Reno*,"

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[4]Although the strong evidence in this case renders the issue moot, appellees note that it is questionable whether a legislature ever can simply disavow responsibility for the contents of a bill that *it has passed*. The district court noted that, under this Court's Fourteenth Amendment jurisprudence, even if the Legislature is wholly innocent of discriminatory intent, it "may be held liable for the referees' intent since a state actor may be charged with otherwise private discrimination by seeking to enforce it." Silver App., at A-52, *citing Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 177-79 (1972); *Shelley v. Kraemer*, 334 U.S. 1, 17-20 (1948). *See also* the discussion *infra* (intent of a bill can be determined from its contents).

district compactness has been "to determine whether the shape of the district was based on racial considerations." Silver App., at A-45 - A-46; *citing Bush*, *supra*, 116 S. Ct. at 1952; *Shaw v. Hunt*, *supra*, 116 S. Ct. at 1901; *Miller*, *supra*, 115 S. Ct. At 2489-90. In the view of the district court, "the racial intent embodied in the redistricting plan . . . is apparent on the face of the statute passed by the Legislature." *Id.*

The district court also cited numerous references in the legislative record to the racial purpose embodied in New York's congressional district plan. Silver App., at A-22 - A-33. These often occurred in the context of a complaint that even more Hispanic districts should have been created. *Id.*, at A-25, A-26, A-33 (comments of the Governor); *see also* Diaz App., at 39a (Assemblyman Gantt introducing the plan in the Assembly by claiming that "[t]he maximum number of majority minority votirg rights districts were created to ensure compliance with the Voting Rights Act").

Another powerful basis for establishing the Legislature's intent to create a race-based Hispanic district is the undisputed evidence, duly noted by the district court, that "members of both houses of the Legislature submitted to the referees and special master versions of a redistricting plan that included a 'tri-county Hispanic district' similar to the 12th CD." Silver App., at A-48. *See* Referees' Report, Lopez App., at A-100 n.22 ("All the proposed plans submitted [to the referees] and to [federal] special master Lacey include a similar tri-county Hispanic district); at A-139 (Assembly plan "also provides for one tri-county [minority] district"); A-145 (Senate plan's "[d]istrict 12 is an Hispanic majority 'tri-county' district"); Affidavit of Theodore S. Arrington, Lopez App., at A-258 ("The third Hispanic district in the [federal special] Master's plan is CD 10 [in] Brooklyn, Manhattan, and Queens. . . . The Senate and Assembly plans also create geographically dispersed districts in these areas."). Note that these proposed plans also

were appended to the State's section 5 submission to the Justice Department. Diaz App., at 3a ("Alternative Plans Submitted").

Finally, as the district court rightly noted, legislative representatives "verbally embraced the primacy of race in redistricting during a hearing held by the [federal] special master." Silver App., at A-48. In the May 18, 1992 hearing cited by the district court, Mr. Hedges, on behalf of the Assembly, and Mr. Carvin, on behalf of the Senate, spoke in grossly racial terms of the need to create a Hispanic district. *See* Diaz App., at 40a - 44a.

Thus, *even if the Legislature had not adopted the statements contained in the Referees' Report and in Gartner's testimony in its submission to the Justice Department*, the district court had an abundance of undisputed evidence showing that the New York Legislature's overriding concern in passing its district plan was to segregate voters by race. In their jurisdictional statements, appellants are silent about the district court's finding that racial intent was apparent on the face of the redistricting statute, as well as the critical fact that both houses of the New York Legislature submitted plans to the referees and the special master which contained similar tri-county "Hispanic" districts.

As the foregoing evidence establishes, Silver's portrayal of the district court's decision as turning on the defendants' mere "awareness" of the racial impact of the referees' plan is nonsense. Silver J.S., at 13 *passim*. Silver's highly selective quotations of the district court's few references to the Legislature's being "aware" of race do not reflect the tenor of the district court's opinion, or the range and quality of the undisputed evidence that it considered. Moreover, appellants' citation of *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256 (1979) is misplaced. In that case, a female applicant, who alleged that a state hiring policy that favored veterans was a

veiled method of favoring men, provided insufficient evidence that the state intended to discriminate. There is nothing veiled about the State's intent here. The 12th CD unquestionably was created and enacted "because of" its racial qualities. A simple application of the principles enunciated in *Feeney* supports the district court's decision.

II. ATTEMPTS TO DISTANCE THE LEGISLATURE FROM THE RACIAL INTENT EMBODIED IN ITS CONGRESSIONAL DISTRICT PLAN ARE LOGICALLY EXTREME AND FACTUALLY EMPTY

Faced with an imposing mass of undisputed evidence, appellant Silver brazenly asserts that the Legislature's "predominant motivation in enacting the plan containing the 12th Congressional District had *nothing to do with race*," but "everything to do" with protecting congressional incumbents. Silver J.S., at 7 (emphasis added).

Silver, joined by the Lopez Intervenors, notes that the *PRLDEF* district court had ordered the federal special master's plan to be imposed unless the New York Legislature enacted a congressional district plan by a particular deadline. The core of Silver's argument on appeal is that the *PRLDEF* court's deadline forced the Legislature to choose between the federal special master's plan and the referees' plan.[5] Silver claims that the state

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[5] Silver's exposition of the facts surrounding the Legislature's dilemma is flawed in that it depicts the Legislature's as more helpless than it was. First, Silver conveniently ignores the fact that it was the Legislature's own chronic failure to act that precipitated the electoral crisis and the two lawsuits. The Legislature could have passed its own district plan at any time before those cases were filed and, indeed, at any time before decisions in those cases were rendered. Second, even after the state court rendered its decision on June 8, 1992, the

referees' plan was more friendly to incumbents than the special master's plan. Therefore, Silver reasons, the enactment of the referees' plan was "motivated" by the intent to protect incumbents. *Id.*, at 7 *passim*; Silver App., at A-86 - A-89; Lopez J.S., at 13-16.

Silver's argument is a word game, dependent on the double meaning that can be ascribed to words like "motive," "purpose," and "intent." The "intent" or "purpose" of legislation is always determined in the first instance by its facially evident content. *See, e.g., U.S. v. Ron Pair*, 489 U.S. 235, 242 (1989) (ordinarily, the "plain meaning of legislation should be conclusive"); *Norfolk & Western v. Am. Train Dispatchers*, 499 U.S. 117, 129 (1991) ("If the intent of [the legislature] is clear, that is the end of the matter"). For example, a bill that authorizes highway construction is "intended" to authorize highway construction; and a bill that bans narcotics is "intended" to ban narcotics.

In the same way, where districts are distorted in a manner that carefully includes and excludes members of particular races, they clearly were *intended* to perform this function. As with any other bill, the intent of a redistricting bill may be inferred from its contents. As the district court found below, "the Legislature should be held accountable for the racial intent embodied in the redistricting plan because such intent is apparent on the face of the statute passed by the Legislature."

Legislature could have pursued legal options, including (1) state appellate court review of the state court's decision, (2) collateral federal review of the state court decision, or (3) appellate federal review of the federal court's "ultimatum" of June 3, 1992. Finally, the Legislature could have chosen to pass its own plan even after June 10, and taken the reasonable legal position that its conduct rendered the state and federal rulings moot. Instead, the referees' plan was debated, passed, and sent to the Governor.

Silver App., at A-52; *see Miller*, *supra*, 115 S. Ct. at 2488-9 ("evidence of a district's shape and demographics" may prove "that race was the predominant factor motivating the legislature's decision"; finding that "it was 'exceedingly obvious' from the shape of the Eleventh District, together with the relevant racial demographics" that it was racially motivated); *Bush*, *supra*, 116 S. Ct. at 1959 (rejecting a claim that districts were drawn to protect incumbents where "the district lines correlate almost perfectly with race.").

Given the bill's content, all of Silver's arguments concerning the political circumstances surrounding the districting bill's passage are irrelevant. Put another way, appellees could *concede* that the districting bill was passed to avoid the harm to incumbents perceived to exist in the federal master's plan. That has nothing to do with the undisputed evidence showing that the 12th CD was carefully designed to encircle Hispanic voters. To raise a triable issue of material fact regarding the primacy of "incumbent protection," appellants must show that the *12th CD* was designed as part of an effort to protect incumbents. Appellants failed even to attempt this showing.[6]

The district court acknowledged that "incumbency explains, in major part, the final boundaries of various districts," but concluded that, "without the factor of race, the 12th CD, as a majority-Latino district, would never have been created." Silver App., at A-57. The district court made the irrefutable point that if incumbency protection truly had been more important than race in the design of the 12th CD, then a "different district, to protect another incumbent, would have been the politically-desirable choice." *Id.*

This underscores the larger point that appellants' claim that

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[6]Note that, in any event, the 12th CD was a "newly created" district which contained no incumbent. *E.g.*, Lopez App., at A-99.

the desire to protect incumbents was predominant is factually empty. The defendants simply failed to present any evidence suggesting that incumbency was more important than the perceived need to draw racially segregated districts, and, in particular, the 12th CD.

The only evidence Silver offered was a series of contemporaneous newspaper articles, and two very brief affidavits, one by Ralph Marino, former Senate Majority Leader of the New York Senate, and one by Benjamin Chevat, who was counsel to former Speaker of the Assembly, the late Saul Weprin. Silver J.S., at 10-12; Silver App., at A-86 - A-89. These articles and affidavits make general statements to the effect that the state referees' plan was perceived to have less impact on incumbents than the federal special master's plan, and that it was preferred for that reason. *Not one of these articles or affidavits even mentions the 12th CD*, let alone disputes that it was constructed to segregate voters by race.[7]

It is hard to fathom what other evidence appellants would present on the issue of the Legislature's intent if given the opportunity to do so. The district court remarked that "none of the defendants has offered, in their affidavits or memoranda, any description of the evidence that they would present at a trial to contradict" the conclusion that "incumbency was always

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[7]Appellees also note that Silver inconsistently offers the statement of a legislator and a legislator's counsel, while arguing at the same time that "[i]n New York State, statements of individual legislators have no probative value in ascertaining legislative motivation." Silver J.S., at 19. Sensing the contradiction, Silver adds that "[i]t is an accepted tenet of political reality in New York" that "all substantive legislative decisions . . . are made solely by two people," the Senate Majority Leader and the Speaker of the Assembly. This dubious proposition is discussed *nowhere* in the record below. Silver is impermissibly trying to make his record now.

subordinated to race." Silver App., at A-52. The mystery remains on appeal.

Silver has belittled the competence of individual legislators to testify as to legislative intent, so presumably he would not offer such testimony.. Silver J.S., at 19. The only statement made by either appellant regarding a future proffer of evidence on this issue is a single paragraph in which Silver claims he would "demonstrate" by way of an "historical background" that "plaintiffs failed to sustain their burden" of showing that race predominated. Silver J.S., at 24. As an example of pure bureaucrat-ese, this paragraph is a masterpiece. It is non-specific and utterly confusing, filling space on the page without managing to say anything. The fact is that both appellants and appellees know that a trial would be a waste of time.

III. THE UNDISPUTED EVIDENCE CLEARLY SHOWS THAT THE 12TH CD VIOLATED NEW YORK'S TRADITION OF DISTRICT COMPACTNESS

Focussing on this Court's statements that a *Shaw*-type claim arises where "traditional districting criteria" are subordinated to race, the Lopez Intervenors argue that the 12th CD is not so irregularly shaped as to fall outside New York's traditional districting criteria. As part of this argument, New York is alleged to have extraordinarily non-compact districts. Lopez J.S., at 17, *passim*.

As with other arguments pressed on appeal, this argument fails first as a matter of fact. To show New York's allegedly non-compact districting tradition, the Lopez Intervenors rely entirely upon a narrative of New York districting. Lopez App., at A-21 *passim*. This narrative -- composed, not by historians, not by legislators, not by political scientists, not by law professors or other experts, but by the *lawyers* for the Lopez

Intervenors -- merely purports to identify 15 or so New York-area districts, from the period 1789 until 1990, that extended into three or more counties. The lawyers for the Lopez Intervenors engage in no quantitative compactness analysis. They discuss so few districts, relative to the entire history of New York, that they are as likely to have established the exceptions to a districting tradition as they are to have shown the districting tradition itself. There is no reference to changes in law or population, and no attempt to provide historical context. The district court agreed that "approximately fifteen districts out of thousands over the course of 180 years does not prove that compactness has not been a traditional criteria" -- and, indeed, that the historical narrative could be conceded without contravening plaintiffs' case. Silver App., at A-64.

The district court also correctly stated that "[c]ompactness is a traditional districting criterion under New York law," citing the state constitution. Silver App., at A-65, *passim*; *see Schneider v. Rockefeller*, 31 N.Y.2d 420, 430, 340 N.Y.S.2d 889, 897 (1972) (not true that "the constitutional requirements of compactness, contiguity and convenience lack vitality"; if the Legislature "plays fast and loose with these constitutional requirements, it risks having a districting plan set aside"); *Matter of Sherrill v. O'Brien*, 188 N.Y. 185, 210-11 (1907) (State Senate plan voided in part because the 13th district violated the Constitution's compactness requirement). Moreover, it is noteworthy that both the referees and counsel for the Assembly stressed the importance of compact districts. Lopez App., at A-78, A-98, A-113; Silver App., at A-64. The contrary, unsupported position is clearly maintained for the purposes of litigation.

Equally devastating to appellants' argument is the fact that "[t]he 12th CD simply is not compact, *even by New York standards*." Silver App., at A-71 (emphasis added). Regardless whether New York's district compactness scores were generally

low, the 12th CD is still either the worst- or second worst-scoring district in the State. *Id.* Furthermore, New York's range of compactness scores is comparable to those of Texas, Georgia, and North Carolina, where racial gerrymanders were struck down. *Id.*, at A-39. It is small wonder the district court concluded that the "argument that 'traditional criteria' under New York law do not require respect for compactness is not supported by the record." *Id.*, at A-64.

The factual record in this case simply does not raise the legal issues asserted by the Lopez Intervenors.[8] But if it did, appellees agree with the district court that the Lopez Intervenors' interpretation would allow states to eviscerate the holding of *Shaw* and its progeny by expediently redefining their "traditions." Silver App., at A-63. Further, lack of compactness is a universal sign that voters have been pulled into or pushed out of districts to facilitate racial gerrymandering. Regardless of a state's districting tradition, an evaluation of district compactness always will serve this valuable evidentiary function.

IV. THERE CAN BE NO *RES JUDICATA* BAR TO THIS ACTION BECAUSE THERE IS NO PRIVITY BETWEEN PARTIES TO THIS AND TO THE *REID* ACTION

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[8]The Lopez Intervenors make a passing (and very unclear) reference to the issue whether "communities of interest" were considered in drawing the 12th CD. Lopez J.S., at 27-8. The district court carefully reviewed powerful evidence, some of it offered by the defendants, showing that communities were destroyed, not created, by the 12th CD. Silver App., at A-59 - A-62. The Lopez Intervenors suggest no new evidence they would provide on this issue. Indeed, the crux of their argument seems to be that "extensive factual evidence is not necessary" on this point. Lopez J.S., at 27.

To be barred by the principle of *res judicata* from bringing a claim, privity must exist between the plaintiffs in the pending and in the prior action. *See Phillips v. Kidder, Peabody & Co.*, 750 F. Supp. 603, 606 (S.D.N.Y. 1990) (claim preclusion regarding parties who do not have a "sufficiently close" relationship to the original litigants would violate due process rights); *Green v. Santa Fe Indus., Inc.*, 70 N.Y.2d 244, 253, 519 N.Y.S.2d 793, 796 (1987); Restatement (Second) of Judgments § 41(1).

It is undisputed that none of the plaintiffs in this action were parties to *Reid*, or were members of any organization that was a party. Silver App., at A-40 n.13. No class ever was certified in *Reid*. Nevertheless, Silver argues that plaintiffs, two Hispanic men and an African-American woman, were represented in *Reid* solely because other Hispanics and African-Americans were parties to that action. Silver proposes a new form of race-based privity that is beyond the reach of any theory of privity that any federal or state court has recognized. In the words of the district court, Silver's argument "contains the same type of racial stereotyping condemned by the Supreme Court" in *Shaw* and other cases. *Id.*, at A-40 - A-41 n.13.

Silver's argument has other serious defects. The claims presented in *Reid* were the opposite of those presented here -- the complaint there sought the drawing of *additional* race-based districts. Further, *Reid* was decided prior to the major change in constitutional law occasioned by *Shaw v. Reno*. Finally, the identical assertion of race-based claim preclusion based on *Reid* was raised and rejected by another district court in *Torres v. Cuomo*, 92 Civ. 5811 (S.D.N.Y. 1993) (not available in F. Supp.), 1993 Lexis 1165, 1993 Westlaw 33639.[9] For the

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[9]Interestingly, it was the Puerto Rican Legal Defense and Education Fund -- attorneys for the Lopez Intervenors -- who represented the

reasons given by the district court below, *res judicata* does not apply here.

V. THE 12TH CD WAS NOT NARROWLY TAILORED

In order to make a threshold showing that section 2 of the VRA has been violated, a "minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district." *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).

The district court rejected the notion that this criterion had been met, on the grounds that "[n]o one looking at a map of the 12th CD could reasonably suggest that the district contains a 'geographically compact' population of any race." Silver App., at A-71. Thus, the 12th CD was not narrowly tailored to achieve its purported goal of compliance with the VRA. The district court's holding in this regard was compelled by two recent decisions of this Court, which proscribed the use of bizarrely drawn districts to comply with the VRA. *Id.*, at A-69 - A-70, *citing Shaw v. Hunt*, *supra*, and *Bush*, *supra*.

The district court squarely held that the "12th CD simply is not compact, even by New York standards." Silver App., at A-71. The district then held, *in the alternative*, that section 2 compactness is not dependent on any particular state's compactness tradition. *Id.*, at A-72. It is this second, alternative decision that forms the basis for much of the Lopez Intervenors' claims to have identified a legal issue needing review. Lopez J.S., at 20-22. But even assuming that this second basis had been the district court's only basis, the legal argument pressed by the Lopez Intervenors is inapposite. The cases they cite obviously are addressing the issue whether strict

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plaintiff in *Torres* and defeated Silver's *res judicata* argument there.

scrutiny applies in the first place -- and not the question of narrow tailoring that was being considered by the district court.

Finally, the Lopez Intervenors argue that the State satisfies the test of strict scrutiny because it had a "strong basis in evidence" for assuming that section 2 of the VRA compelled the creation of the 12th CD. This argument is demonstrably wrong as a matter of law. Dealing squarely with this issue, this Court, in *Bush*, *supra*, stated that in the case before it

> [w]e assume, without deciding, that the State had a "strong basis in evidence" for finding the second and third threshold conditions for § 2 liability to be present. We have, however, already found that all three districts are bizarrely shaped and far from compact, and that those characteristics are predominantly attributable to gerrymandering that was racially motivated and/or achieved by the use of race as a proxy. . . . These characteristics defeat any claim that the districts are narrowly tailored to serve the State's interest in avoiding liability under § 2, because § 2 does not require a State to create, on predominantly racial lines, a district that is not "reasonably compact."

116 S. Ct. at 1961; *accord*, *Shaw v. Hunt*, *supra*, 116 S. Ct. at 1905.

CONCLUSION

For the foregoing reasons, appellees Diaz, Motley, and Coholo respectfully request that the Court affirm the district court's decision below.

Respectfully submitted,

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Suite 2D
New York, New York 10021
(212) 832-9672

Counsel of Record for Appellees Angel Diaz, Denise L. Motley, and Reynaldo Coholo

July 9, 1997

Appendix A

SUBMISSION UNDER SECTION 5 OF THE VOTING RIGHTS ACT FOR PRECLEARANCE OF 1992 REDISTRICTING PLAN FOR NEW YORK STATE CONGRESSIONAL DISTRICTS

JUNE 16, 1992

LEGISLATIVE TASK FORCE
ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT
250 Broadway - 20th Floor
New York, New York 10007-2563
(212)417-4222
FAX (212) 417-3127

June 16, 1992

Chief
Voting Rights Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66128
Washington, D.C. 20035-6128

Dear Chief:

Submitted herewith for preclearance pursuant to Section 5 of the Voting Rights Act (42 U.S.C. 1973 c) is the Redistricting plan for New York State's Congressional Districts. Consistent with the strictures of Flateau v. Anderson, 537 F. Supp. 251 (S.D.N.Y. 1982), the proposed districts were promulgated on the basis of the 1990 decennial census.[1] See, 28 CFR 51.27(g)(h). They are intended for

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[1] The redistricting plan for the Congressional lines promulgated after the 1980 census were precleared in July 1982. 28 CFR 51.27(p): All Section 2 challenges to the 1980 plan were dismissed Flateau v. Anderson, supra; see I. Introduction, 2) Description of Litigation Concerning the Change or Related Voting Practices in New York State will be found in the legislature's submission regarding the Assembly and the Senate 28 CFR 51.27(o).

use in the next primary and general elections scheduled to be held on September 15, 1992 and November 3, 1992 respectively. See 28 CFR 51.27(j). The proposed districts will not be used, enforced or administered until they have been precleared. 28 CFR 51.27(k).

Analysis of changes to previous law (51.27(c)) for the Congress appears in Section II.

Given the complexities of redistricting in New York State, and given the large number of diverse minorities in New York State who are impacted by both Section 5 and Section 2 of the Voting Rights Act, we respectfully request that a decision on preclearance be issued on an expedited basis so as to avoid uncertainty in the elective process. See 28 CFR 51.34.

Respectfully Submitted,

On behalf of the Senate,	On behalf of the Assembly,
/s	s/
Senator Dean G. Skelos Co-Chairman	Assemblyman David F. Gantt Co-Chairman

New York State Legislative Task Force
on Demographic Research and Reapportionment

Submission under Section 5 of the Voting Rights Act for
Preclearance of 1992 Redistricting Plan for
New York State Congressional Districts

*** SEE LEGISLATIVE SUBMISSION**

Letter of Transmittal

I. **Introduction**

1) Compliance with Procedural Prerequisites

* 2) Description of Litigation Concerning the Change or Related Voting Practices in New York State (28 C.F.R. 51.27(o)

* 3) The Legislative Task Force on Demographic Research and Reapportionment

* 4) Names, Addresses an [sic] Telephone Numbers of Assembly and Senate Contact People

* 5) Appendix A - Data Base and Design

II. Analysis of Change to Previous Law

1) Report of the Referees to New York State Supreme Court Justice James Shaw

2) Appendix A - State Court Transcripts (To be submitted later)

3) Appendix B - Alternative Plans Submitted

4) Appendix C - Copy of New York (51.27(a))

   a) Exhibit 7 - Governor's Approval Message and Bill Jacket
   b) Legislative History Documentation (Partial)

* 5) Appendix D - Copy of Previous Law (51.27(b))

III. Demographic Information (51.28(a))

1) Population by Race and Spanish Origin - 1984 Congressional Districts - 1980 Population

2) Population by Race and Spanish Origin 1984 Congressional Districts - 1990 Population

3) Population by Race and Spanish Origin 1992 Congressional Districts - 1990 Population

IV. Maps (51.28(b)

1. Appendix - Congress

a) 1984 and 1992 Block Level Districts Maps

b) 1984 and 1992 Block Level District Maps Shaded by 1990 Census Data for Non-Hispanic Black, Non-Hispanic Asian and Hispanic

***V. Election Returns (51.28(d))**

1) Candidates
- b) New York State Senate 1982-1990
- c) United States Congress 1982-1990
- d) Other

1) Results
- a) New York State Assembly 1982-1990
- b) New York State Senate 1982-1990
- c) United States Congress 1982-1990
- d) Other

VI. Publicity and Participation (51. 28(f))

* 1) Overview
2) Task Force Public Meetings
* 3) 1991 Hearings
* 4) Public Access Policy
* 5) New York state Statistical Profiles
* 6) Meetings With Minority/Community Groups
7) Media Contacts
8) Newsletters/Brochures
* 9) Mailing List Development
* 10) Requests for Publications and Data
* 11) Correspondence from the Public
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VII. Federal Court Plan

VIII. Availability of the Submission (51.28(g)) (To be submitted later

***IX. Minority Group Contacts (51.28(h))**

X. Computer Tapes

1) Appendix H
-JUSTICE_AD_VTDBLOCK.LIST
-JUSTICE_FORMAT_AD.DAT
-JUSTICE_FORMAT_SD.DAT
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2) Appendix I
-SECTION 5 VOTE DATA

I. Introduction

1) Compliance with Procedural Prerequisites

This Redistricting Plan for New York State's Congressional Districts is being submitted as soon as possible after it became final in compliance with 28 CFR Sec. 51.21. The Redistricting Plan became final on June 12, 1992 when legislation constituting the plan duly enacted by both Houses of the New York State Legislature 28 CFR 51.27(g) became law (Chapter 138 of the laws of 1992).

The submitting authority 28 CFR Sec. 51.23 is the State of New York acting through its Legislature.

This submission contains all of the information and documentation required under 28 CFR Sec. 51.27 ("Required Contents") and 28 CFR Sec. 51.28 ("Supplemental Contents") except for the demographic data which will be sent shortly.

Names and address and telephone numbers of Assembly and Senate Contact People

a) Process and Law

Assembly	Senate
Jeffrey M. Wice	Michael A. Carvin
c/o Dickstein, Shapiro &	c/o Shaw, Pittman,

Morin
2101 L Street, N.W.
Washington, D.C. 20037
(202) 861-9197

Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8000

b) Data and Mapping

Alan Gartner, Ph.D
Graduate Center CUNY
33 W. 42nd Street
Room 1610
New York, NY 10036
(212) 642-2062

II. Analysis of Change to Previous Law (51.27(c))

The Redistricting Plan for Congressional Districts for the State of New York enacted by the Legislature in Chapter 138 was designed by referees appointed by New York State Supreme Court Justice James A. Shaw as a result of litigation in Reid et al. v. Marino et al. No. 95671/92, ordered and judgment (Kings County Sup. Ct. June 8, 1992). The Report of the Referees to Justice Shaw explains in detail the background leading up to the development of this plan by the referees for the State Supreme Court. On June 8, 1992 Justice Shaw issued an order implementing this plan as state law and ordered the State Board of Elections to effectuate its implementation.

On Monday, June 8th, the New York State Senate enacted the State Court plan as a bill in S. 8610. On Tuesday, June 9th the State State [sic] Assembly followed by enacting the same plan in A.11921. Governor Mario Cuomo signed this legislation on Friday, June 12, 1992. This law, incorporating the state court plan, is being submitted for preclearance. The Report of the Referees follows.

Appendix B

Racial Breakdown District 12

	NHwhite	NHblack	Hispanic	NHAmeri	NHAsian	NHother
Total	81,303	50,426	335,817	1,487	108,357	2,947
Total %	14.01	8.69	57.87	0.26	18.67	0.51
Total18+	68,891	34,828	227,062	1,033	84,592	1,524
Total18+%	16.48	8.33	54.33	0.25	20.24	0.36

CONGRESS Plan State Racial Breakdown

Di#	County	MCD	PART/	Total	Total18+	HISPANIC	NH White	NH Black	NH Amind	NH Asian	NH Other
12	Kings County	Brook-lyn	PART	292895	198089	197987	38499	33729	881	20145	1654
	New York County	Man-hattan	PART	124854	95244	45127	17042	10419	233	51757	276
	Queens County	Queens	PART	162588	124597	92703	25762	6278	373	36455	1017
12				580337	417930	335817	81303	50426	1487	108357	2947

(As 3:30 pm May 31)
Referees' Plan

Districts Report -- Registered Voters 1

Dist	TotPop	TotRV	%Dem	%Rep	%Con	%Lib	%Rtl	%Ind	NH W % of RV	NH B % of RV	NH A % of RV	HSPC % of RV
6	580337	224389	73.71	12.05	0.62	0.67	0.07	12.41	30.98	60.40	1.01	7.61
10	580338	238023	81.07	6.67	0.28	0.70	0.18	10.84	24.95	59.84	0.86	14.35
11	580337	181050	80.64	6.12	0.26	0.70	0.17	11.83	18.96	72.54	1.15	7.35
12	580338	165668	73.05	11.4	0.49	0.82	0.18	13.81	29.77	15.06	5.31	49.86
15	580337	243958	80.06	6.50	0.27	0.83	0.23	11.92	22.91	51.47	1.09	24.53
16	580337	217518	81.25	6.37	0.55	0.68	0.28	10.73	6.84	43.56	0.55	49.05
17	454628	176086	75.64	10.04	0.69	0.72	0.38	12.31	40.12	37.68	1.03	21.17

Registered Voters Report II

Dist	Tot.Reg Dem	% of NH W	% of NH B	% of Hspc	% of NH A
6	165401	31.44	61.31	6.63	0.63
10	192976	25.15	60.32	13.85	0.68
11	145997	19.14	73.22	6.80	0.84
12	121024	28.85	14.59	53.10	3.47
15	195316	23.37	52.51	23.27	0.85
16	176737	6.92	44.02	48.62	0.44
17	133186	40.23	37.79	21.24	0.74

Appendix C

Reid v. Marino, Index No. 9567/92
Excerpt from a Transcript of
a Hearing on June 2, 1992,
before The Hon. James H. Shaw, Jr.
[pages 106-132]

THE COURT: Good morning, counsels, members of the press, and the parties who happen to appear with their lawyers individually.

This morning, since we are all here, with certainly, you, with a large measure of curiosity, and I know that there are things to be taken up, but to orient you as to where things stand so far as the Court is concerned at this point, the final product, in terms of the referees' material and report to me, is not yet completed. I will get more into that later.

But Mr. Gartner, one of the technicians who has been working very hard on this matter, and knowing how important time was to us, and realizing that I had adjourned this matter for today, has volunteered to interrupt what work they're doing and, with maps that are going to be put up here (indicating), before we go into --

And I know there are applications to be made because it's come to my attention, at least through calls to my law secretary, Mr. Warren Glasner, that there are applications for substitution of counsel and all those kind of things.

But before we get into all the technical things, we have this gathering here because they're interested in geography, and to the extent that I can make a minimal gesture, even though we're still in the process of some fine-tuning, we're going to go about that.

And, Mr. Gartner?

MR. GARTNER: Yes, sir.

THE COURT: Let's see. This show will be, sort of, in your

hands, all right?

(Whereupon, maps were posted on blackboards situated in the well of the courtroom.)

MR. GARTNER: We have presented to the Court a set of maps for the entire state. There are these three-by-four, black-and-white maps for the entire state; one for upstate, one for the city, one for Nassau, and one for Suffolk. The Judge will make them available to you at his discretion.

THE COURT: Let me just say this, gentlemen: Even though you won't have the -- and ladies: Even though you won't-- the parties, that is, won't have the -- how can I put it? -- like real estate lawyers would say, "metes and bounds," you know? Beginning on the north side of whatever, or proceeding along the Genesee River till whatever? That kind of thing. That's yet to come.

Nevertheless, I believe that, you might call it, the gross description will satisfy those that are -- satisfy, and disturb those that will be disturbed.

So, at least, since you've all been good enough to be here this morning, and this business with computers takes long --

We were delayed, of course, by the federal people having control of the computers, pursuant to that injunction, which they did not complete their work as soon as legally or -- we had the option to go, it wasn't there because they were being occupied.

So we have a backup in time, but nevertheless, I want to give you what I can at this point.

MR. GARTNER: All 31 districts are at zero deviation in terms of the one person-one vote standard. Given the arithmetic that there are only whole persons, there are eight districts, obviously, that have one more than the others, but that is considered zero deviation.

Let me briefly describe upstate -- I'm going to focus on the

city and this map with the colors that's slightly easier to deal with.

Upstate, the basic principle was to keep the counties whole, to split only one county and then to split only one town within that county, in order to deal with equal population requirement. For the most part -- and there's sufficient detail in that, I believe, for those who are particularly concerned with upstate -- we did that.

On the Island, now shifting to the opposite extreme, we did the same thing: kept Suffolk County whole.

There are, in Nassau -- there are two whole districts in Suffolk County. There are two whole districts in Nassau County and approximately half of a fifth district, which that then connects with the City.

And there are three-by-five maps, same size as that (indicating), of Nassau and Suffolk County. I will not describe those any more at this point; and if you have questions, per the Judge's instructions to me, I'll try to answer them.

Let me turn and describe the city (indicating).

The instructions of the Judge to the referees, and therefore, their instructions to us, was to honor, in order, the criteria of the federal Constitution: one person, one vote; the Constitutional amendments and the Voting Rights Act that concerns so-called "minority districts"; and then, third, those other factors appropriate for districting.

Having honored throughout the effort the Constitutional standard of one person, one vote, we then turned in the city to honoring the second criterion, those concerning Constitutional amendments and the Voting Rights Act.

A small postscript on upstate and the island:

There are not, per the tests of Thornburgh, or Gingles, whichever way you want to refer to that case, sufficiently large and/or concentrated populations of the protected classes

to form an entire district. But it was our understanding of the ethos of the Voting Rights Act, if not the language or the case law, that, where possible, clusters, or, as Professor Grofman calls them, "kernels," or cores, of minority groups should be kept whole.

So, for example, we kept whole the minority population in Buffalo and Rochester; we kept who the black population in Nassau County.

Okay. Now, to turn to the city.

For those of you who do districting with computers, you know that one of the things that the computer can do is it can produce maps which translate the Census numbers into geography, showing you, for example, concentrations of particular population groups. And so, we produced a set of maps that show the concentrations of the three so-called "protected classes" in New York City; in Census language: "Non-Hispanic blacks, non-Hispanic Asians" and "Hispanics."

In effect, those concentrations tell you how to do the districting, per the Voting Rights Act. And the order in which I will describe these districts, in effect, reflects our using those concentrations as the basis.

There is a concentration of -- now to shift to the terms I'm more comfortable with -- of African-Americans, or blacks, in Southeast Queens and on most of the eastern two-thirds of the Rockaways. And so, we drew a district in Southeast Queens here (indicating).

With one exception, all of our New York City -- I'm sorry. With two exceptions, all of our New York City districts are in the City. There are only two districts that cross the city line; one, the inevitable crossing into Nassau, and secondly, a crossing here (indicating), into Westchester.

I need to ask the Judge a question. Excuse me.

(Discussion off the record between Mr. Gartner and the Court.)

MR. GARTNER: As I said, this is a district entirely in Queens County. It is a district --

And we have several sets of data. Let me talk only about the Voting Rights Act data here, although we also have political data which we used.

Several sets of data were used. We used two sets of data which are derivative from the Census; namely, total population, which the Census then breaks down by subset; and voting age population, or "VAP," by subset.

The third set of data we used were a set of estimates of registration by race. The Board of Elections, as you know, produces the names and addresses of registrants, and so, you can translate, by the computer, into where a person -- whether they live in a particular district.

New York State, unlike some states, does not indicate the race of registrants. The Census does. You can marry, in a technique that at some point I'd be glad to describe, that the Districting -- New York City Districting Commission, whose executive director I was, and other bodies have done, that will give you an estimate of registration by race.

Since we used the New York City Districting Commission's database to do that, those data are only true for New York City. I will give you some estimates about this district (indicating), but they're only true for New York City.

The district in Southeast Queens, District No. 6, has --

And all of this is in the appendix, which the parties have this document; it's in Appendix O, in a document called "Referees' Plan, Minority Districts," the very first page of it.

The black, or African-American, population of that district is 53 percent black population, total population; 51 percent VAP, but 60 percent estimated black registration.

We thought that that was a district that would give the African-American population in that community a reasonable

chance to elect a Representative of their choice; therefore, we did not find it necessary to go out of the County of Queens.

There are basically no blacks around the periphery of this district. So if we wanted to add any blacks to this district, we would have to go out of the county and city, and that was something we didn't -- per the instructions of Judge Shaw, that was the third criterion that we sought to honor, as long as we didn't dishonor the other two criteria. So that's District No. 6.

For those of you who know New York City geography, the Rockaways are about -- the western two-thirds is white, and there's a little tip of white population here (indicating). We tried to makes this district as black as we could, so we shreded [sic] that tip out (indicating).

Next, in the South Bronx, District 16. Again, the Hispanic concentration maps that were produced per the Census show the Hispanic concentration population in the South Bronx.

Again, a general principle that we sought to follow was, we sought to have the districts, to the extent they would, meeting the two upper criteria, one person-one vote and Voting Rights Act issues, emerge from the existing districts rather than behave as if there were not any reality and continuity that was of some importance.

So in this instance, this looks like, with the necessary population expansion, per the drop from 34 to 31 districts, like the district that's down here (indicating), that currently is represented by Mr. Flake.

This (indicating) looks like, the same point, the district currently represented by Mr. Serrano. It is wholly in Bronx County.

And the numbers here, again from the same document, now Hispanics: 60 percent Hispanic population; 58 percent Hispanic voting age population; and 49 percent Hispanic, estimate, registrants.

There are two patterns that one finds almost everywhere in New York City. Since the Hispanic --

If you think about the population by age, the white population, on the average, is the oldest; then the black population; then the Asian population; then the Hispanic population. So you will always see the white percentage of the total go up from total pop. to VAP; you will always see the Hispanic percentage going down, total population to VAP.

Secondly, the whites are more likely -- no always, but more likely as a group -- to be citizens and thus eligible to register. At the opposite extreme, Asians are less likely to be citizens and less likely to register. Blacks are closer to whites in that regard; Hispanics are closer to Asians.

So generally you will see, as you did in this district (indicating), that the black percentage of the population went up as you moved total pop. to VAP to reg., while the Hispanic population goes down.

That's a general pattern that will be true citywide. It's of most interest when I get to the next district, which is the one in Central Harlem.

We kept this self-contained in Bronx County for two reasons -- three reasons: One, we could meet the standard -- having met the one person-one vote standard, we could meet the Voting Rights Act standard without going out of Bronx County.

Second, the Hispanics that you could "lasso" in, to use the computer word, or grab in, or whatever verb you want, either here (indicating), in Washington Heights, which is largely Dominicans or either here (indicating), in Northern Queens, largely South American Hispanics, differ from the population group here (indicating) in that they are not necessarily citizens, thus less registered, thus less likely to appear in the polls.

And so you produce, in effect, a district, were you to bring in -- that you would produce a district that would increase its

"Hispanicity," Professor Grofman's word, but you would not reduce its effective participation in the political process.

Okay. Third district: The district has as its core Central Harlem. Its resident now, and also resident in -- as we proposed, is Mr. Rangel. It is with one exception entirely in New York County; it comes, basically, from the upper 80's and sweeps north all the way to the tip of New York County.

For those of you with arcane New York City geographic knowledge, you will know a portion of New York County is on the mainland of the continental United States as a result of a meander of the Harlem River. Amazing what one learns in this.

In order to meet the population standard necessary for this district, we included Rikers Island, which is part of the County of The Bronx, although it is connected to the County of Queens. Its population, 14,000 people or so, is overwhelmingly Hispanic. It, however, is a population that does not participate in the elections.

Let me give you the numbers on District 15. And here the slope question that I described to you a moment ago becomes amazingly apparent; it's the most interesting district in that regard. Here I'll give you both black and Hispanic numbers, and I'll give it to you in pairs:

At the total population level, this district is 46 percent Hispanic and 37 percent black. That reflects the current district, the district that has over a number of years elected Mr. Rangel.

At the voting age population --

So if you want to hold in your head, its ten percent more Hispanic than black.

At the voting age population, this district is 43 percent Hispanic and 37 percent black. That gap is now married -- narrowed to six but it is still, in numbers, if you will, an Hispanic plurality.

However, at the registered vote level, that district is 51 percent black and 25 percent Hispanic. The slopes have crossed (indicating). So, instead of a gap of seven percent more Hispanic than black, it is in fact 15 percent more black than Hispanic at the estimated registration level.

It's a function of the age and the dispersal of New York City's minority population.

So that is the third, quote-unquote, minority district.

If you look at the concentration maps -- I'm now moving to Northern and Central Brooklyn -- it is clear that there are enough people for two times 580,000, for two black districts in Central Brooklyn. The operational question is not whether or not there should be two black districts, and all the parties to this case do draw two black districts, but is the dividing line within that circle. And in fact, because we understood that issue, what we did was to draw a double district, a million .1 people, and then we played with the issue of the division.

The factors --

So you have this -- so it is this -- lavender? Is that fair? -- this color and this color (indicating), District 10 and District 11.

The current resident of District 11 is Congressman Owens, and the current resident of District 10 is Congressman Towns.

Let me emphasize that this discussion of residence is simply a shorthand meant for convenience, and two, of course, there's no residency requirement. So to call anything So and So's district presumes a decision that person will make, which neither I nor the Court are going to make.

Just as we were aware of the difference between and among Hispanics in crafting this district (indicating), we needed to understand the differences between and among African-Americans in this district (indicating). They are differentially citizens; they differentially participate in the

election process.

The crude cut is between so-called Caribbean blacks and non-Caribbean blacks. There are other, much more fine-grade cuts, but that surely is the first cut that one has to make.

Secondly, the Voting Rights Act case law instructs us to look at questions of crossover. Although New York City is a city characterized by racial block voting, not only are Hispanics and blacks variegated within its group, so too are whites. So that we needed to understand the difference between the whites in Canarsie, who historically have not crossed over to vote for minority candidates, and the whites in Park Slope, some of whom, on some occasions, have historically crossed over.

So a part of the analysis I told you we did -- we did look at political issues -- was to analyze the geography of the -- since we're basically talking about Democrats here -- the geography of the Democratic primary, the Koch-Dinkins Democratic primary, the Jackson-Dukakis Democratic primary, and we began to look at some of the City Council races to understand the question of cohesion as it's used in Voting Rights Act cases, or crossover issues, the goal being to craft a District 11 and a District 10, two districts in Central Brooklyn that gave a real, not paper, opportunity to the black communities in each of those districts to elect a representative of their choice.

Let me give you the numbers there:

In District 11, the yellow district, it is 69 percent black population, 67 black voting age population and 72 percent estimated black registration.

In the District 10, the horseshoe around it, on top of it and on the side of it, you get a slight change; its 56 percent black population, 55 percent black VAP and 60 percent are black registration. So you have one district 60 percent black registration and the other district 72 percent black registration. It's because of a different -- differences in the

white population remaining.

We sought, per the general understanding of these issues and Voting Rights, in every case to keep the white population down as low as possible. So that, for example, in the -- in District 10, the white population is less than a quarter of -- at the registration level; and in District 11, the yellow district, the white population is only 19 percent at the registration level, at the political level.

So we now have five minority districts: one, two, three, four, five (indicating).

Again looking at the concentration maps, one sees, as everybody who drew maps in this case as well as in the other jurisdiction, that there is a potential, if you're not bound by antiquated notions of compactness, for an additional Hispanic seat, what in shorthand -- this is District 12, the orange seat, the so-called "Tri-county Seat."

What you see when you look at the concentration maps is a band of Hispanics that come across Northern Brooklyn -- this is the Brooklyn-Queens border (indicating) -- that comes across, basically, Northern Brooklyn with a small incursion into Queens. And if you forgot about the East River, it comes across Manhattan, into the Lower East Side.

You then see a concentration of Hispanics in Sunset Park and a little bit in Red Hook, and you see a scattering of Hispanics, those Northern Queens Hispanics that I talked about, that we didn't choose to bring up into the Serrano district but we use here (indicating).

And so, what we did, as everybody did, is we drew a district that basically looked like this (indicating), with three legs.

We had a second concern at the same time, which was that there is a third group, protected class, in this city; namely, Asian-Americans. And for the most part, they live adjacent to Hispanic population in this city. So there is an Asian concentration next to the Lower East Site, called

Chinatown. Or an Hispanic concentration next to Chinatown. I don't mean anything by describing the history.

There is an Asian population, what some people call the "Second Chinatown," to the south of the Hispanic population in Sunset Park, and then there are two Asian concentrations in Queens, two kernels, or cores.

Our goal was, at one and the same time, to see if we could maximize the Hispanic population in this district while including as much of the Asian population as we could.

And one of the unique features of this map is, I think we've had our cake and eating it. We've produced a district at the voting age population --

I'm sorry. There is no incumbent resident in that district, for whatever that means.

At the voting age population, we have produced a district that is 54 percent Hispanic voting age and 20 percent Asian voting age. Or, to take the other side of it, it is a district 30 percent white voting age population.

So that's six districts in which a single minority or a coupling together of two minorities are a majority.

The seventh district we drew is a district that's the second district that crosses a --

I'm sorry; let me just go back.

This district (indicating) is wholly within one county; this district (indicating) is wholly within one county; these two districts (indicating) are wholly within Kings County; this district (indicating) is in New York County with a little incursion into Bronx County; this district (indicating) is a tri-county district, in New York County, Kings County and Queens County.

We then drew a district, the second one that crossed the city line, the first one being this district (indicating), which I

haven't described to you yet, and we drew a district that was in Bronx County and Westchester County.

I don't have a version of it but I'll describe it to you. Essentially, what we did is, we wanted to -- we linked together the black population, which is here and here (indicating). I'll describe that in a moment. There's a black population up here (indicating), in Yonkers and there's a black population that picks up over here (indicating), Pelham and New Rochelle and so forth.

The district looks like, for those of you who are into animal characterizations, antlers up at the top. It is a district in which Mr. Engel is resident.

It is a district that at the VAP level is 36 percent black and 26 percent Hispanic. It is 62 percent minority, or, if you want the white numbers, it's 31 percent white VAP.

We don't have the estimated registrants because there's a portion in Westchester County and we don't have the data to do that. We do know the estimated registrants in the New York City part of it, and our understanding of the Westchester population is that that group of African-Americans is similar to this group (indicating), middle class and home owners, and the estimates that we have are correct.

What you have here, the African-Americans population here -- if you wish to think about it in Assembly terms, this (indicating) is Assemblyman Seabrook's area. If you wish to think about it in Council terms, this (indicating) is Councilman Larry Warden's area. If you want to again use the Council terms, this finger (indicating), this is largely the blacks in Reverend Wendell Foster's Council area.

So you have largely a home-owner, middle-class, high-political-mobilization black community. And so, I believe it's reasonable to expect that the rate of political participation will be more like the blacks down here (indicating), in Southeast Queens, than the blacks in Central Brooklyn. So that registration, the registration numbers, will be very close to the

VAP numbers.

That is the seventh minority district that we have drawn; it's a 62 percent minority district at the VAP level.

The next districts, in no particular order:

We drew a district here (indicating), the entirely to Richmond County and adjacent Kings County (indicating); basically, the Bay Ridge area.

Although the law is not clear about whether connections across water need to have things that connect them, and not just going up the Hudson River and the Erie Canal connecting Buffalo to a piece of New York, I guess because it was stuck in my head, the requirements of the City Charter, that when you cross water you have to have a bridge, tunnel or regular -- causeway or regular ferry service, we have done that. Every parcel that's on two sides of the water is connected by a bridge, tunnel, causeway or regular ferry service.

This (indicating) is connected by the Verrazano. Okay.

We have drawn a district here that goes from Coney Island, snakes, or whatever verb you wish, slides, through here (indicating), coming under the bottom of the Hispanic -- Asian population here (indicating), goes along the Brooklyn waterfront, goes through the Brooklyn Battery Tunnel and runs up to here (indicating).

It is current. The residence of Mr. Solarz is in that district.

While I'm still at --

And it includes two counties, Kings County and New York County.

While I am still in New York County, here is another district (indicating). It is essentially the east coming down from the south of District 15. This is about in the mid 80's; it's a little jagged edge.

The one person-one vote standard requires very peculiar-

looking perimeters.

It comes down, basically, the east side of the park; tucks in a little bit under here (indicating), in the Theater District; comes down here (indicating), picks up this white population here (indicating).

For those of you who know New York City geography, this (indicating) is the Grand Street Houses. The purpose in doing that was to increase -- to keep high the Hispanicity of this district. In fact, we didn't want that population in this district (indicating); it had to go somewhere, until it's linked in here (indicating).

We come across here (indicating), to white Greenpoint, and in order to come to the population standard, we come across in here (indicating), to a portion of Queens County.

So this is a three-county, largely white district, New York County, Kings County, Queens County; it includes the residence of -- current residence of Mr. Green and, in this little finger here (indicating), the current residence of Mr. Weiss.

A third of these non-Voting Rights Act districts is --

The dark blue includes the current residence of Mr. Solarz; the light blue includes the current residence of Mr. Schumer.

It comes down here (indicating); comes in underneath the district that we had done, which are two Voting Rights Act districts; swings out here (indicating); picks up the white, western two-thirds of the Rockaways; a little tip here (indicating).

Its a legitimate contiguity connection; it's what someone called a "high-tide contiguity," or "low-tide contiguity." But, forgive the metaphor, it's a kosher district by the rules.

And it picks up these western two-thirds (indicating). It goes as far up, between the edge of this Voting Rights Act district and that Voting Rights Act (indicating). That's why the neck is narrow. It goes as far up as we needed to get the

580. We just kind of inched our way up until we got the 580.

Okay. We then have, again in no particular order, three more districts to describe.

You got half a district coming in from Nassau County. The purple is the other half of that district. It includes the current residence of Mr. Scheuer. It is a largely white --

I mean, all of these after the seven are largely white districts.

This district here (indicating), to a considerable extent, mimics the current district of Mr. Manton and it includes the current residence of Mr. Manton. The big exception from the current district is, it crosses into Bronx County. So you have a bi-county district here.

And then the last district includes the remainder of Westchester County, after you've had Fish and Hamilton coming own into Westchester. After you've take out the portion of District 17, there's a remainder of Westchester County that includes the residence of Miss Lowey, over here (indicating), in Rye.

So you've got a hunk of that district in Westchester County. You've got a piece of that district in Bronx County.

The map is deceiving, not intentionally so, in terms of a large portion of this is water. The land area is basically along here (indicating), and it comes down and it includes the "other residence" of Mr. Ackerman.

So t is a tri-county district in which there are two incumbents.

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Appendix D

Reid v. Marino, Index No. 9567/92
Excerpt from a Transcript of
a Hearing on June 5, 1992,
before The Hon. James H. Shaw, Jr.
[pages 228-252]

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* * *

MR. GARTNER: I'm Alan Gartner, I served at the pleasure of the referees, as one of their three experts, per your Honor's order, with my colleagues Professor Wendy Brown of Tulane University Law School and Mr. Michael Petreites of the College of Staten Island....

The referees presented to the Court yesterday, and it has been given to the parties -- I just want to make sure -- a final referees' report, which includes a report, a set of appendices and several sets of maps.

I want to note, as your Honor knows, that there is a revised Appendix J, which is a revised set of metes and bounds.

There has been some confusion, if I may say, as to the criteria that the referees instructed the staff to follow in pursuit of your order. They were clear with us and we were clear as to our obligation.

Criterion number one was the Constitutional standard of one person, one vote. Only when we had met that, and that was met a zero deviation, then we turned to the Voting Rights Act standard. Only when we met that did we turn to other criteria.

There was no sacrifice of criterion two in order to meet criterion three. There was no sacrifice of criterion one in order to meet criterion two or three.

In looking at that third set of criteria, we were concerned

with community of interest, with history, continuity and compactness.

Parenthetically, let me note that for Congressional districts there is no residence requirement, so that when we talk about So and So's district, that is a -- that is also a presumptuous statement. Each person in this state can choose to run. Each person who is an adult and otherwise eligible to run for the Congress is able to choose where he or she may wish to run. And so, we did not place anyone, or can anyone place anyone, in a district.

Let me just summarize. All districts in the plan presented to you are at zero deviation. All districts are contiguous. We were faced with the fixed reality of going from 34 to 31. That makes for an extraordinary complication. I suspect I know that perhaps best of anyone, since I had the luxury, in working for the New York City Districting Commission, of going from 35 to 51, a much easier game, your Honor.

Let me just talk about the process that the referees instructed us to go through and the process which they went through. There was some confusion about that.

The referees would have been pleased to find one of the extant plans meeting the standards of the Constitution and the statute. They reviewed and had the staff review and review again with great care all of the plans presented in this Court. They did not find any which, in whole, on all fours, if you will, met the standards that you instructed them to honor.

It was only then, only after having done that, that they then turned and instructed the staff to begin to craft a plan. They told us, if I may be flip for a moment, plagiarism is not a sin in this activity. Where we say something that was good, we grabbed it, with no pride of authorship.

And as a number of people have noted, there are districts in the plan that the referees have recommended to you that mimic, in one way or another, a plan that -- a portion of a plan that we found. We took that as a plus, not as a negative.

Let me turn to the so-called "minority-majority district." We took our guidance in crafting those districts from the law and the federal statute and the cases interpreting that statute, from what we call the "concentration maps," and I'll turn to that in a moment.

But we then did a third thing, which I think is unique in the work of the various plans around the city, in this forum and the other, and so forth; we did what the Supreme Court has instructed to be done in terms of crafting districts per the Voting Rights Act; we did a locally intensive analysis, or what my colleague Herman Jenkins calls, "we looked at the facts on the ground."

We were concerned with voting age population, which the cases say we should be concerned with, but we were also concerned with registration and turnout. I think that distinguishes the plan proposed to this Court as compared to the plan proposed to the other Court.

We were also concerned, within the various groups, to disaggregate the populations. Particularly, "Hispanics" is a category of the Census; it does not distinguish between and among Hispanic groups. But their participation in the electoral process, which is, of course, what we are talking about here, is distinguished by the fact that some are automatically citizens, Puerto Rican Hispanics, while others may or may not. You cannot treat, if you will, the Hispanic population as a single unity in considering the Census data when we then look at the electoral process.

So too with the black community. The Census talks about "non-Hispanic blacks" but it does not distinguish between and among, to just take one cut, the so-called "Caribbean blacks" and "Native Americans," the former [sic] of whom, again, are citizens; the latter, some may and some may not. We sought to distinguish between and among those groups.

Finally, following the guidance of perhaps the single, more-qualified expert in this entire field, Bernard Grofman, with whom we worked closely in the New York City districting

work, we were concerned with the percent of non-Hispanic whites in a district.

We were concerned, as several of the people who have talked this morning, to keep that percentage down so we do not, in effect, violate the opportunity of a so-called "protected class." Or a group of protected classes in a district to have their rights violated by another group, who may tilt or switch the election. That too was part of our analysis, and I will refer to that as I go through this.

Let me talk about the seven districts in some particularity, but let me not repeat what the Court has already heard, at least from me, several days ago.

The order in which I'm going to talk about these groups ought not represent anything about importance; it simply moves east to west, and that's the numerical system we used. We started with the first district in Montauk and we then got to the city. Okay.

Let me talk about Southeast Queens, District 6, here (indicating). It has a voting age population, African-American, or "non-Hispanic black," as the Census calls it, of 52 percent. But, as is generally true throughout the city and most particularly true in that area, the registration of African-Americans goes up; it is, in fact, 60 percent African-American at the registration level.

Not only are there the differences among African-Americans that I talked about before, or "non-Hispanic blacks," to use the Census term, there are differences in communities. The turnout rate, as Mr. Wooten and other alluded to, is much lower in this area (indicating) among African-Americans than it is in this area (indicating). One needs to be mindful of that fact when one looks at the various districts.

So we have, in this area of Southeast Queens, a non-Hispanic black majority at the VAP level, the voting age population level, an even higher African-American rate at the

registration level, and an even higher rate when one turns to mobilization.

Let me call your attention, your Honor, to this map (indicating). This is a map that we drew based on the Census, the Census total population. I want to emphasize that because it does not distinguish voters; it distinguishes people. And it is total population, not VAP, so it does not distinguish adults from nonadults. And it does not distinguish, as the Census does not at all, between citizenship, no less registrants. But nonetheless, it is a useful starting point.

The richer the shade (indicating) -- there's a code here (indicating) -- the more intensive the population group. And we're talking here about non-Hispanic blacks.

In effect, your Honor, this district draws itself (indicating). The test is: "Have we included all of the population that is contiguous to this area?" As you can see, the black outline -- and what we have done is, we have concentrations and then we have overlaid with these black lines (indicating) the districts we drew for the seven so-called "minority districts." This district is this same district here (indicating), this shade, without the squiggles, here (indicating), and it includes most of the eastern third of the Rockaways; it incorporates all of the areas of intense black population here (indicating).

You will see that we carefully crafted, with wiggles and squiggles and darts and arrows and so forth, around this population in the Rockaways, and, indeed, we didn't take the whole eastern third of the Rockaways. There is a large population, tucked right here (indicating), in the very eastern end, that you will notice is white, white on the map and white in population. We shreded [sic] that out of this district because we wanted to maintain its strength, the African-American population strength, over in this district.

In sum, we do not believe, unlike the map that Master Lacey has reported to the federal Court, that one needs to go out of the City of New York or the County of Queens and

reach into Nassau County to add to this district. We believe so would, A, be packing this district; B, making the Nassau black population a tail on a Queens white; and, three [sic], denying that population an opportunity to participate in elections in their county of residence.

To turn now to Central Brooklyn, one can see in this area here (indicating) a large core, which, in fact, is sufficient for two whole districts. If you drew a line around these two districts, a double district, there are in fact nearly three-quarters of a million African-Americans there, 733,000, out of a double district of a million-one, 580,000 times two.

The question, then, is not whether or not one can or cannot draw a district here; the question is how you divide that district.

But before I turn to that critical and difficult question, there is no need to go out of the County of Kings in drawing that district, no Voting Rights Act need; and, having found that there was no Voting Rights Act need, then we come to criterion three, which are the other factors.

Again, we do not believe, as Judge Lacey's plan does, that you need to stretch one of those districts into Queens County.

But let me emphasize, we only turned to the question, in criterion three, having satisfied ourselves that we met criterion two about the Voting Rights Act. No sacrifice was made in the Voting Rights Act standards to deal with other issues.

District 10, this district here (indicating), the horseshoe district or horse-collar district or whatever metaphor you wish, has a voting age black population of 55 percent and a black registration at 60 percent.

This district here (indicating), 11, the one in yellow, has a voting age population, black, of 68 percent, 13 percent more on the voting age; and a 73 percent estimated black registration, again the same 13 percent.

Let me note, as your Honor knows, of course, that when one turns from voting age population to registration, you have incorporated the notion of citizenship. The voting age population does not discriminate, as the Census does not, between citizens and non-citizens, but it is only citizens who may register. And so, we have accounted for the issue of citizenship when we used registration data. But registration, while it subsumes citizenship, does not deal with issues of turnout and issues of so-called "crossover" between other groups: whites, if you will, supporting or not supporting, the points that Miss Simpson and Mr. Wooten raised.

These are close issues. While I believe the plan that the referees have recommended to you on this point, in particular and overall, is a plan that, in all parts, comports with the requirements that you laid upon the referees, there are nuances and judgments that one, in good faith could make that are different. But I do believe what the staff has provided to the referees and they have recommended to you fully comports with the standard you set.

Let me just say one further thing about that district, to pick up on a point that I made a moment ago. These two districts, both singly and together, in comparison with Master Lacey's plan, both include more blacks and fewer whites, and we did that intentionally, for just the kind of point that Mr. Wooten raised. We were sensitive to that.

And indeed, let me express my appreciation to Mr. Wooten for his tutoring me over the last tow years about that nuance. I may not have learned it as well as he may have wished, by [sic] I certainly have heard it and understand.

Let me turn to the so-called "tri-county district," District 12, this band across here (indicating), in Brooklyn; a little bit into Queens (indicating); a leg down here (indicating), into Brooklyn; a leg, or whatever you want to characterize this as (indicating), up into Queens.

This district, or something like it, is drawn in all the plans all over town, all the plans presented to this Court or the

plans presented to the federal Court, including the so-called "PRLDEF plan," as well as the plan that Master Lacey recommended to the three-judge panel.

The district that we have drawn is 54 percent Hispanic VAP and 50 percent Hispanic registration. It equals the Lacey plan at the registration level.

I do not believe you can richen its Hispanic population.

But we have also done something else, which Mr. Lacey, and indeed his expert, Professor Arrington, specifically said they didn't choose to do, which is, indeed, we had a concern for the third covered class under the Voting Rights Act, Asian-Americans.

Let me apologize for not bringing a third concentration map. We did draw it and we did use it, and I think the proof is in the pudding, as I will note in a moment.

We, in District 12, have an Asian voting age population of 20 percent. It is the highest Asian voting age population of any plan across the board, including the Majority Coalition's plan.

And although I will accept what Miss Simmons said -- I've had a long experience taking orders from her, when she was the vice-chair of the Districting Commission; I've always accepted her judgments.

Although, perhaps, there are one or two Census tracks that we may, at the option -- on the margin, could have included, let me emphasize that although those districts were included in the Majority Coalition's plan, its Asian VAP is lower than the Asian VAP in this plan; it is lower by one full percentage point.

We all know, as does Miss Simmons and surely Miss Koo, who was a tutor to me also on the Districting Commission, that there is a very sharp drop-off from VAP to reg. in the Asian Community, but nonetheless, I think it is important and useful to try to maximize the Asian population, if you can do

it without expense of the Hispanic population.

And the answer is, your Honor, in this instance, you can have your cake and eat it, too.

Let me note Mr. Baca's comments about that district and say, I was pleased to hear his support for that district. I believe it is the best Hispanic district you could draw, as well as also the best Asian district you can draw. It includes, as Miss Koo indicated, the three -- or, if you will, two and a half of the three Asian cores around the city: Chinatown, Sunset Part and one of the two smaller Asian cores in Queens. You just can't reach far enough for the second small Asian core.

It is a historic act, what the referees have presented to you in terms of the Asian community, and one I think warrants emphasizing and note.

Let me just, before I leave District 12, refer to this map (indicating), which is Hispanic population again. Doesn't deal with citizenship; doesn't deal with registration. It's Hispanic population.

Its no disrespect to the drafters of this district to say it is aesthetically unpleasing. But if you look at these shapes and wiggles and darts and fingers (indicating) and whatever you want to call them, it mimics what you see over here (indicating).

Why do we drive down here (indicating)? The population concentration of Hispanics, and similarly in this instance the population concentrations of Asians, tells you to drive down that far. We go as far, but not any further, than the Hispanic community goes in this area of Southern Brooklyn (indicating).

Why this strange and peculiar configuration up here (indicating), of 12, as it wanders around? We seek to mimic the Hispanic concentrations up here (indicating), and the same thing in the band across Northern Brooklyn.

And parenthetically, here (indicating) you have living close together an Asian-American population in Chinatown and an

Hispanic population in the Lower East Side. But there is a white population, the so-called Grand Street Houses, here (indicating), which we brought out of that district for the purpose of trying to keep as high as possible the Hispanic and Asian population in District 12.

Let me turn to Central Harlem. In Central Harlem one sees illustrated most dramatically why you need to look not just at VAP but at registration.

In voting age population, the district we have proposed, this district here (indicating), 15, that is anchored in Harlem, is 37 percent black VAP, 46 percent Hispanic VAP. In other words, it is "minus-nine" black, if you want to use that term. But when one turns to registration, estimated registration, it is 51 percent black registration and 24 percent Hispanic registration, an amazing shift of 26 [sic] percent as you move from VAP to registration.

How could that be? Well, because there is a large percentage of Hispanics who are included in VAP, Dominicans here (indicating), who are not registered, and a somewhat large but not nearly as large percentage of Hispanics in "El Barrio" who are not registered.

To refer just for a second to the work of the Districting Commission, which Miss Koo referred to, the City Council districts are one-fourth the size of Congressional districts. You have very different play when you're doing that. So, in fact, the Districting Commission crafted a district up here (indicating), which, for the Dominican community, in any terms, if you simply looked at the numbers, your Honor, you'd have thrown that out of court and said it was packed.

But the Districting Commission, mindful of the very low registration, pushed that -- pushed -- that district is over 83 percent Hispanic. You'd say that's packed.

You can't make a real district at the Congressional level --

And I believe, as Mr. Baca indicated, the district that Master Lacey has proposed, using the Hispanics here

(indicating) and other Hispanics, is not a real district, not a district, in fact, that gives that community an opportunity to express its choice. In fact, it has expressed its choice over time in the district where it is.

You don't need to stretch a Central Harlem district into The Bronx and Westchester, as Master Lacey has proposed. You can satisfy fully and completely criterion two, in terms of the Voting Rights Act, with this district (indicating); and then, as I indicated before, you ought to look at the other criterion, criterion three, staying in a county, staying in the city.

Unlike the master's plan, which takes the Central Harlem district out of the city and out of New York County, this district is in New York County, with the one exception of Rikers Island. We did that simply because we needed population.

Turning now to district 16, here in the South Bronx, the purple district (indicating), again, the concentration map of Hispanics tells you what to do. Its voting age population is 49 percent.

At the VAP level, it is the same as Master Lacey's, but because Master Lacey exchanges South Bronx Hispanics, who are largely Puerto Rican, for Northern Queens Hispanics, who are largely non-Puerto Rican, noncitizens, nonregistered, nonparticipants in the political process, the VAP stays the same but our reg. is superior to his because we did the kind of locally intensive analysis that Thornburgh requires one to do.

And again I believe Mr. Baca's point there; I was pleased to hear what he had to say.

And again, having satisfied to the maximum extent the Voting Rights Act standard, we then looked at criterion three and chose to keep this district wholly in Bronx County, as compared to the master's plan, which includes three counties, and end up with a lower Hispanic registration. So that's 0 for 2 on that one.

Last of the seven minority districts: There is a black concentration here (indicating); it is an area currently represented in Assembly by Mr. Seabrook and in the City Council by Mr. Warden. And there is a concentration along the edge here; you can see it here (indicating); again, from the City Council experience, we know that as the district now represented by Reverend Foster -- Wendell Foster.

We linked that with a black population in Westchester County that is here (indicating) and that is here (indicating).

We produced a district that is 62 percent -- I'm sorry -- 72 percent, at the VAP level, minority; 26 percent black, 26 percent Hispanic.

All of the registration data that I've been referring to, your Honor, comes for the files of the New York City Districting Commission, which, of course, only attended to New York City. The registration analyses we did were -- was only for New York City.

So I can't tell you the registration for the entire district, but the New York City portion of that district, District 17, has a 59 percent minority registration. Four-fifths of the district is in The Bronx, and the black population in Westchester is much more akin in socioeconomic terms to the black population down here (indicating), middle class, home owners, than the black population in Central Brooklyn. And so, I think it's fair to project, but it is only a projection, that the registration of the district as a whole will be as high as we have estimated the registration for the New York City portion.

I think that is a district in which the minority communities, plural, have a realistic opportunity to express their choice. There is a nonminority incumbent in that district, and that's a distinct advantage. But I do believe that the minority communities, black and Hispanic, will have a real voice in that community.

In summary, both the plan that the referees have recommended to you and that the special master has

recommended to the federal Court have seven minority-majority districts. If one wants to guess at November, and that's all it is, your Honor, there are four strong African-American districts; there are two strong Hispanic districts; and there is one, this last one, 17, that's not clear in terms of the election result. But we're not here to do the work of the voters; we're here to give a level playing field to the voters. That is a district in which the minority community can exercise its choice.

Looking at criterion three, having met the Voting Rights Act standards, six of the seven minority districts, minority-majority districts, in the plan the referees are recommending to your are wholly in the city, while only five of seven of Master Lacey's.

Again, having met criterion two, I think it's appropriate to look at three. Four of the seven in the referee's plan, in their recommendation to you, are wholly in a single county of New York City; only two of the seven in the master's plan are wholly in the city.

Overall, looking at the population of all seven districts, the referees' plan vis-a-vis the master's plan, there are ten percent fewer whites in the master's plan -- I'm sorry -- in the referees' plan. Excuse me. That's done intentionally, for the reasons that I've mentioned before.

Overall, now looking at the five districts which have minority incumbents, the new districts in which those minority incumbents are resident, in which they may or may not choose to run -- their choice -- we have preserved the continuity of those five districts nearly twice as well as the master's plan. Seventy-six percent of the population in the five districts, in this plan, in which incumbent minority members are resident were in the districts of those incumbents previously, while in the master's plan, only 42 percent.

Again, that was done intentionally; we believe that's appropriate.

It's not incumbent protection, your Honor, at the expense of the Voting Rights Act; it's looking at continuity, having satisfied the Voting Rights Act.

In Southeast Queens, we've not packed the district; we've not broken the city line; we've not wasted, if you will, the Nassau blacks.

In Central Brooklyn, comparing the two districts in which the referees drew with the two districts that the master drew, those two districts, in the aggregate, are seven percent more black in the referees' plan and 27 percent fewer white. That's good on both sides of the equation, for the referees' plan.

In the so-called "tri-county district," District 12, it's equal to the master's plan in Hispanic VAP, it exceeds the master's plan in Hispanic reg., and at the same time triples the Asian VAP in that district.

And finally, in the South Bronx district, it exceeds the master's plan at the registration level and has half as many whites in that district. So I believe it makes it a much stronger district.

That completes my summary, your Honor.

Let me again express my appreciation for your allowing me to participate.

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Appendix E

New York State Assembly
Two Hundred and Fifteenth Session
Excerpt from the Transcript
June 9, 1992, 8:46:30 pm
[pages 2-3]

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ACTING SPEAKER GRABER: Mr. Gantt, explain the bill.

Visitors take seats.

MR. GANTT: Thank you very much, Mr. Speaker.

As most of you know, we have tried for sometime to try and negotiate a plan, along with the Senate, so that we could come up with a Congressional plan that would benefit the state of New York. Unfortunately, that was not able to come about because of a number of areas of disagreement about what we should do.

What I would like to do to start out is give you background about how this particular plan came about, of which the State Supreme Court developed, and while it is not the plan that the Speaker of this Assembly nor myself would have developed, unfortunately, we are stuck with a situation that this is the only game in town, and we must do that.

Just for your background, this plan was developed by a panel of three referees appointed by the state Supreme Court Justice, Justice James Shaw, pursuant to his order.

The plan according to the referees complies with the one person/one vote requirement of the United States Constitution, the Equal Rights Protection Clause of the 14th Amendment, and the federal Voting Rights Act. The maximum number of majority minority voting rights districts were created to ensure compliance with the Voting Rights

Act.

This plan contains three districts in which the voting age population is African-Americans, one in which 50 percent of the voting age population is Hispanic. The plan creates an additional district that will help to ensure the election of the minority community's candidate of its choice.

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Appendix F

Puerto Rican Legal Defense and
Education Fund, Inc. v. Gantt,
CV-92-1521 (SJ)
and
Waring v. Gantt, CV-92-1776 (SJ)
Excerpts from Transcript of Hearing
before Special Master Frederick B. Lacey
May 18, 1992
[pages 12-18 and 88-91]

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THE SPECIAL MASTER: Mr. Hedges

MR. HEDGES: I think the main features of the plan that was proposed are pretty straightforward in terms of equal population requirements. There is a one-person deviation throughout the state. The smallest district is one person larger than -- the largest is one person larger than the smallest.

With regard to incumbency and partisan fairness, I think if you look carefully at the plan, you will see that the plan is evenhanded with regard to the treatment of partisan incumbency.

When we look at the Voting Rights Act, I think we look at

the more significant difficulties in drawing districts within the state. And I think they start with the fact that voter turnout, particularly in primary elections, which are decision in the City of New York, are extraordinary law. There is no place else in the county where you see turnout levels of 3 and 4 and 5 percent deciding elections of statewide significance or citywide significance in a routine fashion.

And that happens in the City of New York. It's especially a problem in Brooklyn, the Bronx, what [sic] is true in other parts of the city as well. Pieces of Manhattan and certainly portions of Queens. With that thought in mind, districts are designed. Our plan is very conservative in its approach in allowing the minority community to elect candidates of their choice.

In the case of the Bronx, the district is 97 percent minority. That's because the minority population simply doesn't vote and a noticeable white population is quite likely to be victorious. I don't think we have a magic number in mind except to say the higher the white population gets, the more likely that problem is going to arise.

Moreover it's the case Hispanics and blacks don't vote together. So minority isn't the same as a community being able to select a candidate of its choice.

As we work through the details of things, I think we note in Manhattan we have not divided the Asian population that allows us to create a real new seat with a substantial minority population without deleteriously affecting the two existing Afro-American seats in Brooklyn.

Similarly in the Bronx, we have a Hispanic seat with a very, very high total minority population and to make sure the Hispanic community which votes in very, very low numbers, particularly in the primaries that are decisive, has a real opportunity to select candidates of their choice.

You certainly have had an opportunity to look at the numbers, I'm not going to try to go through the districts one

at a time, save to say it seems to me some comparisons are appropriate. This plan is very similar, certainly in its approach to that of the majority coalition. The differences are truly in the details.

I would make the same general observation with regard to some of the plans that we were -- that were made available to us concerning Hispanic districts in the Bronx from some of the Hispanic groups.

That having been said, it seems to us that the most conspicuous difference in approach is between us and the plan that was submitted by the Senate, and the big differences we think are in regards to the treatment of the two Afro-American seats in Brooklyn where one of those two seats has a very substantial high turnout, white population that would significantly endanger the Afro-American seat currently held by Major Owens.

We don't see incumbency protection as an issue, but we are very much concerned with retrogression. Certainly we agree that the creation of a paper second district in Bronx, Hispanic district, creates two districts with substantially higher white populations than can be permitted if the Hispanic communities are to be able to choose their elected representatives.

I think after that most of the rest of the differences between our plan and that proposed by the Senate are relatively small scale, and I would note a couple of things that seem to me to be in common with almost every plan, and that is there is the creation of a new Hispanic seat that goes from Brooklyn to Manhattan and Queens which has a very consistent configuration of the Lower East Side, pieces of Jackson Heights and the Bushwick-East New York sections of Brooklyn. I think that's probably it.

One other thing that is worth mentioning is it is possible to create a seat that has a higher Afro-american population than we did in our district that involves a current incumbent Charles Rangel. We felt that the current configuration which

is a seat wholly in a community called Harlem which has historically elected a black representative despite having lower black populations than Hispanic populations is something that we ought to honor, the community has consistently made those determinations and gratuitously rearranged those things in the name of increasing the numbers without increasing the opportunity for Afro-Americans to choose or Hispanics to choose, for that matter, in Harlem would be a policy mistake and risks retrogression.

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CARVIN: Thank you. My name is Michael Carvin, I represent the Senate party, Ralph Marino in this case. I would like to focus first, talk first about the district that's received a lot of attention from the other commentators.

The senate plan, along with the assembly minority plan, is the only plan that creates seven minority districts in the city. As Mr. Faso pointed out, that's the only number that fairly reflects minority voting strength in New York City.

Under the other plans, two of 13 districts would equal about 15 percent of the congressional representation in the city, when we get that up to three of 13, it comes to about 23 percent which is just slightly below Hispanic representation in the city, which is approximately 24.4 percent of the city.

And the basic point, wholly apart from the fact that it reflects the representation of the city, is this third Hispanic district can be easily accomplished and it's very important to accomplish this, because you accomplish two things by creating the District 14 in our plan that is not present in the other plan.

What we do consistent with the Voting Rights Act is seek to group together concentrations of minority voters rather than split them apart, as is done certainly in the assembly plan and some of the others that have been presented.

In addition, just grouping together minority voters, because of the fact, as the assembly has pointed out already, that black and Hispanic voting patterns in the city are quite different. The legal term is there is a lack of cohesion between blacks and Hispanics in the city. Blacks will tend to support candidates over Hispanics and vise [sic] versa. It is very important to assure that each district minority group is a majority, an electoral majority in the district rather than submerging Hispanics into a black district or blacks in an Hispanic district which we seek to do when give [sic] each minority group a majority in a district.

The focus on the third Hispanic district that's been discussed is to take the Hispanic concentration in northern Manhattan and the Bronx and put them together in a district where they constitute a solid majority and, at the same time, this allows you to take the concentration of blacks in northern Manhattan in the Bronx and even reaching out into Westchester for the first time in Mount Vernon and New Rochelle and create a much more solid district.